

REMARKS

Reconsideration of this application in view of the following remarks is requested. After entry of this response, claims 1-14 are pending in the application. The response includes no claim amendments.

In the office action dated July 19, 2004, the examiner rejects claims 1-3 under 35 U.S.C. §103(a) as being unpatentable over Nicely (US Patent No. 3,565,127) in view of Waters (US Patent No. 3,577,873). The examiner allows claims 7-14, and objects to claims 4-6 as being dependent upon a rejected base claim, but would find these claims allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims.

Claim Rejections – 35 USC § 103

In rejecting claims 1-3 under 35 U.S.C. § 103(a) as being unpatentable over Nicely (US Patent No. 3,565,127) in view of Waters (US Patent No. 3,577,873), the examiner states that Nicely teaches an unspun yarn comprising a longitudinal fiber assembly of substantially untwisted and parallel fibers, including a longitudinal reinforcing thread and a fiber assembly covering. The examiner acknowledges that Nicely fails to teach that the reinforcing thread is helically wound around the fiber assembly in a single longitudinal direction, wherein at predetermined intervals the direction of the winding reverses, but states that Waters provides this teaching, and that it would be obvious to use the wrap taught by Waters with the fiber assembly of Nicely to retain the unspun core of Nicely in a more reliable manner.

The examiner believes the combination is obvious because if one reinforcing thread is cut, in Waters, the integrity of the wrap is maintained, whereas the integrity of the wrap is not maintained in the braid of Nicely if one reinforcing thread is cut. The examiner believes that

a skilled artisan would have appreciated the teaching and obviously made the combination.

Applicant respectfully traverses the examiner's rejection of claims 1-3 under 35 U.S.C. §103(a), as applicant denies that a prima facie case of obviousness has been established. Applicant contends that the examiner's statement is conclusory without adequate justification existing in Nicely in view of Waters to substantiate a §103 rejection.

The question raised under 35 U.S.C. §103 is whether the reference(s) taken as a whole would suggest the claimed invention taken as a whole to one of ordinary skill in the art. Accordingly, the claimed invention taken as a whole cannot be said to be obvious without some reason given in the reference(s) why one of ordinary skill would have been prompted to modify the teachings of the reference(s) to arrive at the claimed invention. Therefore, some reason or suggestion must be found in the evidence of record that would have led one of ordinary skill in the art to produce the claimed invention in order to properly establish a prima facie case of obviousness. No such reason or suggestion exists in Nicely and Waters.

Accordingly, applicant contends that it would not have been obvious to one skilled in the art to apply the wrap disclosed in Waters to a central core bundle as disclosed in Nicely, since no teaching can be found in Nicely or Waters to suggest the claimed combination, or to teach or suggest the effect of cutting one of the reinforcing threads. The invention of Waters is directed to producing a core yarn with desirable surface effects, not to the structural integrity of the yarn. Conversely, Nicely is directed to providing a composite filamentary structure with physical properties that enable it to be woven, in contrast to the raw core materials.

Not only are the two references directed to producing different results, they also involve different starting materials. In Nicely, the core bundles comprise "a multiplicity of

high-modulus, high-strength, brittle, and highly inextensible filaments” (col.1, lines 64-65). By contrast the core component of Waters comprises “set false twisted synthetic continuous filaments” (col.1, lines 29-30), which by virtue of their set false twist are extensible. Moreover, the disclosure in Waters (at col.2, line 71 through col.3, line 20) describes the use of constituents with different extensibilities. This is contrary to Nicely, which applies only to inextensible filaments.

The differing objectives of Nicely and Waters, and the materials to which they relate, are so completely at a variance that applicants submit it not obvious to the ordinary skilled artisan to combine specific features of the two. One of the features of the present invention is providing a high-strength yarn. It is not obvious that the application of the wrap disclosed in Waters for surface effects would provide a structural advantage over the wraps disclosed in Nicely when applied to differing core materials.

An obviousness rejection under §103 requires that the surrounding circumstances or evidence of record make any proposed modification over the reference(s) obvious to do rather than obvious to try. The examiner states that it would have been obvious to use the wrap taught by Waters with the fiber assembly of Nicely to retain the unspun core of Nicely in a more reliable manner, since if one reinforcing thread is cut, in Nicely, it can unravel causing the entire wrap to fail, whereas if one reinforcing thread is cut in Waters, the integrity of the wrap is maintained and the core protected. The examiner's statement of obviousness is made without any suggestion in Waters that modifying the differing core of Nicely with the wrap of Waters would result in the claimed invention, or would result in the requisite expectation of success necessary to maintain a 35 U.S.C. §103 rejection.

Accordingly, the examiner's conclusory statement of obviousness, without more, does not satisfy the burden of establishing a prima facie case of obviousness. One cannot base obviousness upon what a person skilled in the art might try or might find obvious to try but rather must consider what the reference(s) would have led a person skilled in the art to do successfully.

For the foregoing reasons, applicant contends that a prima facie case of obviousness has not been established. Accordingly, the examiner is respectfully requested to withdraw the §103 rejection of claims 1-3 based upon Nicely in view of Waters.

Allowable Subject Matter

Claims 7-14 are allowed. The examiner objects to claims 4-6 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant respectfully acknowledges the examiner's objection to claims 4-6, and will rewrite these claims in independent form to include all of the limitations of the base claim and any intervening claims, as necessary, upon examiner's final disposition of the respective base and intervening claims.

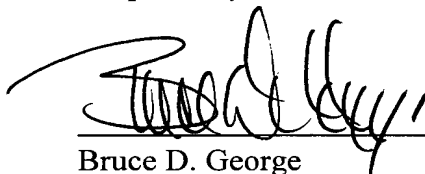
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CONCLUSION

In light of the above remarks, applicant submits that pending claims 1-14 are allowable and requests that examiner issue an early notice of allowance. The examiner is invited to call the undersigned attorney in the event that a telephone interview will advance prosecution of this application.

Respectfully submitted,



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